

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1113 OF 2007

Shri Mehboob Abdul Shaikh	...Applicant.
Versus	
Senior Inspector of Police and Anr.	...Respondents.

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Mr.U.B.Night, Adv. for the Applicant.
Mr.V.B.Konde-Deshmukh, APP, for the State.
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CORAM : SMT.V.K.TAHILRAMANI, J.
DATED : 12th April, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.
2. The applicant is seeking bail in C.R.No.101 of 2006 of Talegaon Dabhade Police Station, Pune. The said case is under Section 377 of IPC.
3. It is the prosecution case that the applicant who is about 25 years of age had unnatural sexual intercourse with the minor son of the complainant who was only five years of age at the time of the incident. The complainant who is mother of the minor boy has stated that on 19.7.2006 at about 4:00 p.m. the applicant who is known to them took her minor son for a ride on his

motorcycle. When the complainant returned home at 5:30 p.m., she saw her son lying on the bed. When she went to touch her son, her son started shouting and on enquiry, her son told her about the act done by the applicant.

4. The medical certificate shows - "CLW over anal region, at 6 o'clock - 3 X 1 X 0.5 c.m., and at 12 o'clock - 1 X 1 X 0.5 c.m." The medical certificate clearly corroborates the case of the prosecution.

5. The learned Advocate for the applicant submitted that there is delay in lodging the FIR. He has submitted that the incident has occurred on 19.7.2006. However, the FIR has been lodged on 21.7.2006 and this fact throws considerable doubt on the prosecution case. As far as this aspect is concerned, it is seen that the complainant who is mother of the minor boy is a vegetable vendor. She came to know about the incident at 5:30 p.m. on 19.7.2006. At that time her husband had gone out of station. He returned on 21.7.2006. On his return, she informed her husband about the incident and immediately thereafter the complaint was lodged on 21.7.2006. Thus, it is seen that

the delay in lodging the complaint has been satisfactorily explained by the complainant.

6. Thereafter, the learned Advocate for the applicant submitted that the complainant has stated that the incident had taken place on 19.7.2006, but, in the history noted by the doctor who examined the minor boy, it is stated that the incident took place on 20.7.2006. However, as stated earlier, the mother of the minor boy is a vegetable vendor. She is not an educated lady. At this stage, it cannot be said that under what circumstances the date 20.7.2006 appears in the medical certificate. Hence I am not inclined to give overmuch importance to this aspect at this stage. The applicant has committed unnatural act with the boy who was just 5 years old at the time of incident. The applicant has committed heinous offence. His involvement in the commission of the offence is *prima facie* brought out on the basis of FIR and other material. In this view of the matter, I am not inclined to grant bail.

7. Application is rejected.

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(SMT.V.K.TAHILRAMANI, J.)